

Complaint

Miss M complains that BMW Financial Services (GB) Limited (“Alphera” Financial Services) unfairly entered into a hire-purchase agreement with her. She’s said the agreement was unaffordable and so she shouldn’t have been accepted for it.

Background

In December 2017, Alphera provided Miss M with finance for a used car. The cash price of the vehicle was £26,682.00. Miss M paid a deposit of £30.81 and required finance for the remaining £26,651.19 she needed to complete her purchase.

Alphera accepted her application and as a result she entered into a 48-month hire-purchase agreement with it. The amount lent was £26,651.19 and the loan had interest, fees and charges of £6,333.68, which was made up of interest of £6,332.68 and an option to purchase fee of £1. So the balance to be repaid of £32,984.87 (which does not include Miss M’s deposit) was due to be repaid in 47 monthly instalments of £461.21 followed by an optional final payment of £11,308.00 which Miss M needed to pay if she wished to keep the car.

Miss M settled the finance in full and early in September 2020. In July 2023, she subsequently complained that the agreement was unaffordable and Alphera shouldn’t have provided it to her.

Miss M’s complaint was considered by one of our investigators. She didn’t think that Alphera had done anything wrong or treated Miss M unfairly. So she didn’t recommend that Miss M’s complaint should be upheld.

Miss M disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Miss M’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Miss M’s complaint. I’d like to explain why in a little more detail.

Alphera needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Alphera needed to carry out proportionate checks to be able to understand whether Miss M could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Alphera carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Alphera suggests that various factors - such as Miss M's credit score, what she owed to other lenders, her existing indebtedness; whether she had any credit cards and/or payday loans; her employment status and the amount of the monthly payment to this agreement – were all considered before Miss M's application was accepted. On the other hand, Miss M has said that the payments were unaffordable for her.

I've thought about what Miss M and Alphera have said.

Alphera hasn't provided us with the output of what it was that it learnt about Miss M or the actual data which it relied upon to determine that the payments to this agreement were affordable for her. So I don't actually know what it was that Alphera relied upon to reach the conclusion that this agreement was affordable for Miss M.

As Alphera has not provided sufficient information to satisfy me that it did take reasonable steps to understand whether Miss M could afford the monthly payments, I'm not satisfied that it did complete fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Miss M.

As proportionate checks weren't carried out before this agreement was entered into, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Alphera that it was unfair to enter into this agreement with Miss M on the basis that she wouldn't be able to afford the monthly payments.

Given the amount borrowed, the monthly payments and the length of the agreement, in order for Alphera's checks to have been proportionate, I think that it would have had to have an understanding of Miss M's income, her payments to existing creditors and her regular living costs. I want to be clear in saying that this isn't the same as saying that Alphera had to obtain bank statements in order to verify all of this as how it found out about this was down to it.

I've considered the information Miss M has provided on her circumstances at the time. But I don't think that Alphera attempting to find out further information about Miss M's living costs would have made a difference here. I say this because I've not seen anything that shows me that when Miss M's committed regular living expenses, other non-discretionary expenditure and her existing credit commitments were deducted from what she received each month, she did not have the funds to make the payments to this agreement.

I say this in the knowledge that Miss M had been maintaining payments of a similar amount to an existing hire-purchase agreement. This agreement was replacing Miss M's previous one. The fact that this agreement had similar monthly payments leads me to think that there were discussions about what Miss M was currently paying and whether she had been able to afford this as part what she would be able to pay each month going forward.

Finally, I also need to keep in mind that this transaction took place at a time where Miss M decided that it was a reasonable time to purchase a vehicle. So, at the time at least, she wanted the finance she needed to enable her to acquire this vehicle - albeit her complaint makes it clear that she no longer feels that way. However, Miss M's submissions now are being made with a view to obtaining a successful outcome on her complaint.

I have to consider what Miss M is now saying in this light and in these circumstances. It is therefore difficult for me to accept that Miss M would proactively have looked to have shown the monthly payments for the agreement to be unaffordable, in circumstances where the information provided now suggests proportionate checks would have shown that they were.

In reaching my conclusions, I've also considered whether the lending relationship between Alphera and Miss M might have been unfair to Miss M under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Alphera irresponsibly lent to Miss M or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

Overall and having carefully considered everything, while I don't think that Alphera's checks before entering into this hire-purchase agreement with Miss M did go far enough, I've not been persuaded that reasonable and proportionate checks would have prevented Alphera from providing these funds, or entering into this agreement with her.

This means I've not been persuaded that Alphera acted unfairly towards Miss M and I'm not upholding the complaint. I appreciate that this will be very disappointing for Miss M. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 12 May 2025.

Jeshen Narayanan
Ombudsman